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Chapter 19: State and Municipal Government

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CHAPTER 19

State and Municipal Government

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A. Municipal Government

§19.1. Zoning by-laws: Determination of validity. A petition was filed in the Land Court [1] to determine the validity of an amendment to a town zoning by-law in the case of *Pierce v. Town of Wellesley*.[2] The amendment, adopted at a special town meeting, revised a section of the town zoning by-law so as to include the words "municipally owned or operated public parking lot" among the purposes for which "single residence districts premises" may be used. The petitioners requested rulings of law to the effect that the amendment, which reserved to the town the privilege of operating parking lots in residence areas, was invalid, (a) because arbitrary, unreasonable, and discriminatory, and (b) because bearing no substantial relation to the promotion of public health, welfare, safety, etc. The requested rulings were not granted. The Supreme Judicial Court, hearing the case on a bill of exceptions, held that the amendment of the zoning by-law was valid, reiterating the much stated principle that "every presumption is to be made in favor of" the amendment, and observed that "the fact that the question is debatable does not empower the court to substitute its judgments" [3] for that of the town. The Court further ruled that the town meeting was not arbitrary and unreasonable in revising its zoning by-law so as to permit town parking lots even in residence zones. Whether the public necessity for traffic relief extended to residence zones, as well as to other parts of the town, was a matter for legislative determination by the town meeting, the members of which could exercise their collective judgment in the light of their special knowledge of conditions in the

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§19.1. [1] G.L., c. 240, §14A; c. 185, §1(j½).

[2] 336 Mass. 517, 146 N.E.2d 666 (1957). For further comment on this case, see §14.2 *supra*.

[3] See Cohen v. Lynn, 333 Mass. 699, 705, 132 N.E.2d 664, 668 (1956), and cases there cited.

town; [4] and the fact that parking lots in residential areas would be detrimental to some adjacent properties does not invalidate a town policy of permitting these parking lots for good and valid public reasons by a generally applicable, nondiscriminatory zoning by-law.

The Court, however, in the case of *Atherton v. Selectmen of Bourne,*[5] arrived at a decision different from that in the *Pierce* case. It was decided that an amendment to the zoning by-law attempting to reclassify certain land in the town of Bourne was invalid when it endeavored to single out a small tract of land for different treatment from that accorded to similar surrounding land indistinguishable from it in character, and therefore was, in effect, "spot zoning." [6] The Court, turning to the procedural aspects of the case, posed the question whether the proper remedy of the persons aggrieved was by appeal to the board of appeals under G.L., c. 40A, §13, or by petition for a writ of mandamus. It was decided that a petition for a writ of mandamus would lie, although mandamus, being an extraordinary legal remedy, ordinarily would not be appropriate if another and effectual remedy were available.[7] The Court noted, however, that the statutory remedy afforded by G.L., c. 40A, §13 was not available to petitioners under the particular facts of this case.

§19.2. Tort: Basis for municipal liability for acts of independent contractor. Whether a town is liable for damages arising out of the alleged negligent act of an independent contractor was the issue raised in the case of *Thurlow v. Town of Provincetown.*[1] Although a municipality is liable for its negligence in connection with maintaining a water supply system in part for the use of inhabitants who pay for the water supplied,[2] nevertheless, to affix liability, it must be shown either that the servants or employees of the town participating in the work were negligent [3] or, as in this case, reference must be made to some theory, other than agency, under which a town would be held liable for the negligent acts of an independent contractor. The *McConnon* case[4] had earlier expounded a theory applicable to instances in which the work done was of an especially dangerous character, hazardous to the

[4] Burham v. Board of Appeals of Gloucester, 333 Mass. 114, 117, 128 N.E.2d 772, 774 (1955); see also Concord v. Attorney General, 336 Mass. 17, 24, 142 N.E.2d 360, 365.

[5] 1958 Mass. Adv. Sh. 511, 149 N.E.2d 232. For further comment on this case, see §§14.2 and 14.5 *supra.*

[6] General Laws, c. 40A, §2 provides: "Due regard shall be paid to the characteristics of the different parts of the city or town, and the zoning regulations in any city or town shall be the same for zones, districts or streets having substantially the same character."

[7] See Parrotta v. Hederson, 315 Mass. 416, 420, 53 N.E.2d 97, 99 (1944).

§19.2. [1] 1958 Mass. Adv. Sh. 727, 149 N.E.2d 901.

[2] Iver Johnson Sporting Goods Co. v. Boston, 334 Mass. 401, 402, 135 N.E.2d 658, 659 (1956); Sloper v. Quincy, 301 Mass. 20, 24, 16 N.E.2d 14, 17 (1938).

[3] See Baumgardner v. Boston, 304 Mass. 100, 105-107, 23 N.E.2d 121, 124-125 (1939).

[4] McConnon v. Charles H. Hodgate Co., 282 Mass. 584, 588, 185 N.E. 483, 485 (1933).

extent that "necessarily from the nature and circumstances of the work harm will occur unless guarded against," so that even if a municipality was not negligent in the selection of the independent contractor, it nevertheless would still be liable "if, through any lack of reasonable care on its own part in guarding against the known dangers of the undertaking, injury resulted from the negligence of those to whom it entrusted its performance." The Supreme Judicial Court, in the *Thurlow* case, having found that the defendant town had no ground to believe that injury would probably result from this work unless it took special precaution, held that there was no basis to hold the town liable for any negligence on the part of the independent contractor. Professor Prosser states that

> the principle [of responsibility for negligence of an independent contractor doing inherently dangerous work] seems to be limited to work in which there is a high degree of risk in relation to the particular surrounding, or some rather specific danger to those in the vicinity *recognizable in advance* as calling for definite precautions.[5]

§19.3. Schools: School committee power over teachers' salaries and finance. The traditional supremacy of the school committee relative to the right to fix the salaries of public school teachers was impugned in the case of *Lynch v. City of Fall River*.[1] In the year 1956, the school committee presented the mayor with budget estimates which, in turn, were incorporated in the budget that was submitted to and approved by the city council for that year. In June, 1956, because of vacancies which had not been filled, there was a large unexpended balance in the teachers' salaries allocation. The school committee voted to allot the unexpended balance to an increase in the salaries of teachers for that year. Although the city did not controvert the absolute right of the school committee to fix the salaries of public school teachers,[2] it did contend that this right must be exercised prior to the adoption of the annual budget. Reliance was placed upon G.L., c. 44, §33A which reads in part, "The annual budget shall include sums sufficient to pay the salaries of officers and employees fixed by law or by ordinance." The short answer given to the city's contention was that school teachers' salaries are fixed not "by law or by ordinance" but by contract.[3] The Court resolved the issue in this case by citing the controlling case of *Leonard v. School Committee of Springfield*,[4] wherein an attempt to increase salaries, after the budget became effective, was also made. In deciding the question in the *Leonard* case, Chief Justice Rugg in effect stated that, when a school committee does not attempt to spend more than a total appropriation made for the support of the public schools

[5] Prosser, Torts §64 at pp. 357-361 (2d ed. 1956).

§19.3. [1] 336 Mass. 558, 147 N.E.2d 152 (1958).
[2] See Watt v. Chelmsford, 323 Mass. 697, 700, 84 N.E.2d 28, 29 (1949).
[3] G.L., c. 71, §38.
[4] 241 Mass. 325, 135 N.E. 459 (1922).

but merely asserts a right to fix salaries of teachers without being restricted in this regard to particular items specified in the budget, the statutes have all been interpreted to confer upon school committees power so to establish the salaries of teachers within the total amounts appropriated by the budget.

A deficiency in the town's total appropriation for school purposes at the March, 1956 annual meeting, below the amount requested by the school committee, was the subject of a petition under G.L., c. 71, §34 [5] by ten taxable inhabitants of the town of Plymouth in the case of *Illig v. Town of Plymouth*.[6] The town contended that the salary estimates of the school committee, having been submitted forty-one days after the time provided by statute, and unreasonably near to the date of the town meeting, may not be made a basis for requiring that the town vote for the requested school items. The town based its contention on G.L., c. 41, §59 which provides:

> . . . committees . . . of a town authorized by law to expend money shall furnish to the town accountant . . . not less than ten days before the end of the town financial year, detailed estimates of the amounts necessary for the proper maintenance of the departments under their jurisdiction for the ensuing year . . .

It having been previously held in the case of *Hayes v. Brockton*,[7] that in respect to cities, the school committee acting within the scope of its powers and duties under G.L., c. 71 was not controlled by a provision similar to that above quoted,[8] the Supreme Judicial Court rejected the contention of the town.

The case of *Young v. Worcester*[9] went one step further in respect to city budgets, for it was there set forth that a school committee, to insist upon an appropriation, must necessarily give its estimates to the executive at least before the time of his submission of budget to the council. But it should be noted, in contrast, that the provisions applicable to estimates and budgets of cities are neither applicable to nor comparable to those of towns. Therefore, the Court, in the *Illig* decision, felt that the principles established in the *Young* case, which applied only to cities, did not obligate the school committee of a town to give its estimates to the finance committee before the town meeting as a condition of recovery under G.L., c. 71, §34. The distinction seems to be that a city budget has aspects of a legislative instrument whereas

[5] "Every city and town shall annually provide an amount of money sufficient for the support of the public schools as required by this chapter. Upon petition to the superior court, . . . brought by ten or more taxable inhabitants thereof, . . . alleging that the amount necessary in such city or town for the support of public schools as aforesaid has not been included in the annual budget appropriations for said year, said court may determine the amount of the deficiency, if any, and may order . . . such town to provide a sum of money equal to such deficiency . . ."

[6] 1958 Mass. Adv. Sh. 497, 149 N.E.2d 140.

[7] 313 Mass. 641, 649, 48 N.E.2d 683, 688 (1943).

[8] G.L., c. 44, §31A.

[9] 333 Mass. 724, 133 N.E.2d 211 (1956).

by contrast the town budget is, in effect, only compiled recommendations having no legislative force, the first act with such force in towns being a vote at town meeting. The Court also stated that the voters may not use a failure of the school committee to conform to the orderly procedures leading up to appropriations at town meeting as an excuse for not making the school appropriations which G.L., c. 71, §34 says they must provide.

§19.4. Charitable trusts: Ten taxpayers' suit. In the case of *Clark v. Mayor of Gloucester*[1] a petition by ten taxable inhabitants was brought under G.L., c. 40, §53 to compel the City of Gloucester to resort to the Probate Court for application of the *cy pres* doctrine relative to certain land which was devised to it as a charitable trust, and which the city proposed to sell because the original purpose of the settlor could no longer be carried out. Since the act complained of was that the city was selling land held as a charitable trust and not that the city was about to expend any money or incur any obligation, the ten taxable inhabitants statute[2] was not applicable. During the pendency of the appeal in this matter, the land was sold; therefore, the disposition of the funds resulting from the sale could be determined upon a ten taxpayers' petition filed "by leave of court" under G.L., c. 214, §3(11).

§19.5. Wage and salary classification plans: Interpretation of method of amendment. In the case of *Robinson v. Selectmen of Watertown,*[1] amendments to the town's wage and salary plan, established under G.L., c. 41, §108A,[2] whereby certain town employees were to be compensated at higher rates of pay, were submitted to the voters at large by invocation of the referendum procedure. The voters at large, having voted against the amendment, the proposals for increase were thereafter newly initiated and the amendments to the proposed compensation and classification plan were voted upon and passed by the town meeting members at a subsequent limited town meeting. At the trial, wherein the validity of the vote of the limited town meeting was questioned, it was argued that the subject matter contained in the amendatory articles, relating to salaries and wages, was not a proper subject for determination by the voters at large at a referendum town meeting, but that the articles were the proper subject for action by the limited town meeting. The Supreme Judicial Court resolved this issue by turning to the statutory provisions[3] under which wage and salary

§19.4. [1] 336 Mass. 631, 147 N.E.2d 191 (1958).
[2] G.L., c. 40, §53.

§19.5. [1] 336 Mass. 537, 146 N.E.2d 657 (1957).
[2] The statute reads in part: ". . . a town by by-law may establish, and from time to time amend, a plan classifying any or all positions, other than those filled by popular election and those under the direction and control of the school committee, into groups and classes . . . Such . . . town may in like manner . . . by vote of the town at a town meeting, establish, and from time to time amend, a plan establishing minimum and maximum salaries to be paid to employees in positions so classified . . ."
[3] G.L., c. 41, §108A, quoted *supra* note 2.

classification plans are established, and noted that the manner prescribed for amending salaries fixed under said plans was "by vote of the town at a town meeting." Looking at the entire context, it is manifest that G.L., c. 41, §108A, in prescribing action "by vote of the town at a town meeting," contemplated voting by the voters at large at a referendum town meeting and, therefore, the votes of the limited town meeting relative to the amendments were invalid.

§19.6. **Public welfare: Settlement.** The city, in the case of *City of Worcester v. Town of Charlton*,[1] had furnished hospital care at its municipal institution to a patient who was a resident of, and had a settlement in, the defendant town. A question thereafter arose as to the rates to be charged by the plaintiff city to the defendant town for services and materials. It was contended by the defendant town that it was not liable for any charges in excess of those prescribed by G.L., c. 117, §24.[2] The Supreme Judicial Court resolved the issue by distinguishing Section 14 of Chapter 117 of the General Laws,[3] under which plaintiff city based its case, from Section 24 of the same chapter, cited by the defendant in its argument. Section 14, it was ruled, is confined to the class of actions in which a town that has furnished support is seeking recovery against another town in which the person supported had a settlement, whereas Section 24 provides an action for relief furnished by a private institution or individual, which action must be brought against the town in which relief was accorded although it might not be the place of settlement. A case illustrative of this point is *Symmes Arlington Hospital, Inc. v. Arlington*,[4] in which a private institution was allowed to recover from the town in which the hospital was located under Section 24 for care and services rendered to patients who were residents of another town. The scope of Section 24 is to make a town, in which the necessary relief was furnished by an individual or private institution, immediately liable, with a right in that town to recover from the indigent person himself under Section 5, or from the town ultimately liable (place of settlement) under Section 14. The *Worcester* case was brought under Section 14 which is not embraced by, or in any way made subject to, the limitations of rates for hospital care established by Section 24.

A case involving a consideration of several interrelated sections of the statutes relating to settlements and veterans' benefits was *Town of*

§19.6. [1] 336 Mass. 525, 146 N.E.2d 675 (1957).

[2] G.L., c. 117, §24: "Every town shall be liable for any expense necessarily incurred under this chapter . . . for the relief of a person in need of public assistance therein by any person not liable by law for his support . . . In case such relief is furnished to a person in a hospital, the town shall be liable for his support therein in a sum not exceeding the maximum amount then allowable to a town under section eighteen of chapter one hundred and twenty-two as reimbursement from the commonwealth for like support in a hospital."

[3] "Boards of public welfare in respective towns shall provide for the immediate comfort and relief of all persons residing or found therein, having lawful settlements in other towns . . . The expense of such relief . . . may be recovered in contract against the town liable therefor . . ."

[4] 292 Mass. 162, 197 N.E. 677 (1935).

Marshfield v. City of Springfield.[5] The plaintiff town sought to recover from the defendant city certain sums expended by it for old age assistance under G.L., c. 118A, furnished to the mother of a veteran both of whom had legal settlement in Springfield at the time the son enlisted in the navy in 1917, thus qualifying both at that time to receive veterans' benefits under the provisions of G.L., c. 115. The issue in the case was whether anything in the last sentence of G.L., c. 116, §5 operated to prevent the veteran's mother from losing her Springfield settlement. The last sentence of this section provides:

> The settlement existing on August 12, 1916, . . . of a veteran *whose services qualified him* to receive veterans' benefits under the provisions of Chapter 115, and the settlement of his . . . mother, *qualified by his service* to receive such benefits, shall not be defeated, except by failure to reside in the commonwealth for five consecutive years or by the acquisition of a new settlement.[6]

The veteran's mother had not resided in any one city or town for five consecutive years since 1937, nor did she ever reside outside Massachusetts; thus it was not contended that she had acquired any new settlement elsewhere after ceasing to live in Springfield. However, the latter part of this section provides:

> Veterans' benefits shall be paid to a veteran or dependent by a city or town in which he has a settlement . . . within the commonwealth . . . provided, that no benefits shall be paid . . . to any other applicant . . . unless the veteran of whom [s]he is a dependent has a settlement in the commonwealth or has actually resided within the commonwealth continuously for three years next preceding the date of such dependent's application for such benefits.[7]

The son had not resided in Massachusetts since 1937 and had plainly lost his settlement in Massachusetts; therefore, at first blush, it would appear that the veteran's mother could not receive veterans' benefits under this provision. The Court resolved the issue by interpreting, in the light of its legislative history, the words of Section 5, "whose service qualified him," to mean that the mother of a veteran who, when a veteran himself once had a Massachusetts settlement at a time when his mother had one also, would be protected from loss of a Massachusetts settlement, once acquired, even though she never had occasion to apply for veterans' benefits while the veteran himself was residing, or had a settlement, in Massachusetts. Since she became "qualified" to apply for veterans' benefits, if the necessity should arise, by the military service of her son and by her and his then possession of settlement in

[5] 1958 Mass. Adv. Sh. 945, 151 N.E.2d 53. For further discussion of this case, see §8.11 *supra.*

[6] G.L., c. 116, §5. (Emphasis supplied.)

[7] Ibid.

Massachusetts, her settlement could be lost only by absence from the Commonwealth for five years or by her acquisition of a new settlement.

§19.7. **Civil service: Reinstatement.** A petition for a writ of mandamus was brought in *Scott v. Manager State Airport, Hanscom Field*,[1] in which a watchman classified under civil service contended that his service was wrongfully terminated during the six-month probationary period. The Supreme Judicial Court pointed out that while previously an appointee might be discharged without notice and opportunity for hearing during the probationary period, Section 20D of Chapter 31 of the General Laws introduced certain limiting prohibitions, one of which requires written notice in particular detail as a condition precedent to the termination of an appointment. The statute also provided that there could be no change in duties during the probationary period. Since notice in the *Scott* case was properly given, and since the appointing authorities had not changed the duties of the position to which the petitioner had been appointed, the appointment, in view of the unsatisfactory performance of the petitioner, could be legally terminated.

Unlike the *Scott* case, *Martin v. Aldermen of Newton*[2] held that an appointee could be removed without cause and without notice or hearing. In a majority of cases, the relevant general statute concerning the removal of public employees is G.L., c. 39, §8A which provides:

> Unless otherwise provided in any general law or in any special law relating to a city, any officer or official appointed or elected by the city council may be removed by said council for cause after a public hearing, written notice of which shall be given said officer or official fourteen days, at least, prior to the date thereof . . .

However, in the *Martin* case this statute was inapplicable because there was another provision in a special law relating to the city of Newton which permitted removal of this appointee (comptroller of accounts) by vote of a majority of the board of aldermen. This special provision was not repealed or modified by the general statute for it was the intendment of the general statute to leave such special laws operative.

The case of *Caulfield v. Fire Commissioner of Brookline*[3] illustrates the necessity of compliance with the statutory provisions for obtaining commission approval of reinstatement. The petitioner, who had been given a leave of absence because of physical incapacity to perform his duties, applied to the respondent fire commissioner for reinstatement, which application was refused. Purporting to act under G.L., c. 31, §46C [4] the petitioner applied to the civil service commission for rein-

§19.7. [1] 336 Mass. 372, 145 N.E.2d 706 (1957).
[2] 1958 Mass. Adv. Sh. 829, 150 N.E.2d 545.
[3] 336 Mass. 569, 146 N.E.2d 896 (1958).
[4] The section reads in part as follows: "If the separation from service of such . . . employee was due to illness, and the appointing authority fails to make a request for reinstatement upon demand of such . . . employee, the . . . employee may make a request for a hearing before the director. . . . [T]he director shall forthwith hold a hearing, hear all parties concerned and render his decision."

statement. The director of civil service having denied his application, he then applied to the commission for a review of the director's action, which action the commissioners reversed by authorizing the petitioner's reinstatement. The respondent refused to reinstate the petitioner despite this reported ruling, contending it was not in accordance with law and of no effect. The Supreme Judicial Court, in resolving the matter, cited *Moore v. Civil Service Commission*[5] and quoted G.L., c. 31, §2(b), which provides in part that the commission shall

> hear and decide all appeals from any decision . . . of . . . the director, upon application of a person aggrieved thereby; provided, that no decision . . . of the director shall be reversed . . . except by three affirmative votes of the commission.

It was concluded in the *Moore* case that with respect to an appeal from the director by "a person aggrieved," the commission was bound to hold a hearing since the statutory words "hear and decide" import a quasi-judicial hearing affording to the appointing authority due opportunity to be heard. The petitioner, not having established on the record that the commission reversed the action of the director after hearing, consequently had failed to furnish evidence of a valid approval by the commission of the reinstatement of the petitioner.

§19.8. Municipal employees: Resignations and retirement pay base. The plaintiff, in the case of *Campbell v. City of Boston,*[1] had been appointed chairman of a municipal board and was asked to tender his resignation by a succeeding mayor some time prior to the expiration of his specific term. At a personal interview with the mayor, the plaintiff stated that he "resigned under protest." It is provided by G.L., c. 41, §109, that a town officer may resign from his office by filing his resignation thereof in the office of the town clerk, which provision also applies to cities.[2] The resignation here was not made in the manner required by statute; therefore, its legal effect must be tested by the rules of the common law.[3] According thereto, all that is required is that the resignation shall be voluntary and shall be accepted by the appointing power; it is not necessary that the resignation be in writing. Since the plaintiff's act was voluntary and accepted, it was legally effective to result in an immediate severance from office.

The determination of the amount of plaintiff's annual retirement pay under G.L., c. 32, §58 [4] was the issue in the case of *Murphy v. City of Boston.*[5] The plaintiff received $6056 for his services as a master at the Brighton High School; he was also appointed annually as teacher-

[5] 333 Mass. 430, 435, 131 N.E.2d 179, 182 (1956).

§19.8. [1] 1958 Mass. Adv. Sh. 989, 151 N.E.2d 68.
[2] See G.L., c. 4, §7, cl. 34.
[3] Warner v. Selectmen of Amherst, 326 Mass. 435, 437, 95 N.E.2d 180, 182 (1950).
[4] "A veteran who has been in the service of the commonwealth . . . shall . . . be retired from active service at sixty-five percent of the highest annual rate of compensation . . . payable to him while he was holding the grade held by him at retirement . . ."
[5] 1958 Mass. Adv. Sh. 845, 150 N.E.2d 542.

coach and received as compensation therefor the sum of $1800. The Court's decision accorded with the contentions of the plaintiff that his annual retirement compensation under Section 58 was 65 percent of $7856, the compensation payable to him as teacher-coach and teacher-master and not, as the mayor contended, 65 percent of $6056, the compensation payable to him for services as teacher-master only. It is the intendment of the statute that the base for computing retirement pay be one's total regular pay. The Court was of the opinion that the plaintiff at the time of his retirement was performing, for the same department of the city, regular teaching and coaching duties, under separate appointments, and that his regular pay included pay under both types of appointment. The Court cited the case of *Smith v. Lowell*,[6] wherein it had stated that the objective of the statute was to provide for a retired employee an annual allowance amounting to a certain percentage of the regular compensation received by him before retirement. Accordingly, the Court in that case felt that when the regular work and regular pay of the employee, who regularly worked seven days a week, included "overtime" hours and "overtime" amounts under a compensation schedule based on a forty-hour week, the total regularly paid him was to be deemed his "annual rate of compensation because it was payment for his customary and normal work." In the light of the *Smith* case, and the fact that the work of the plaintiff was so related, it was decided in the *Murphy* case that the highest annual combined compensation under both types of appointments stands as the base for the plaintiff's retirement pay, and that the view that only his salary as teacher-master was to be included in the retirement pay base was erroneous.

§19.9. Death benefits: Construction of words "personal injury." General Laws, c. 32, §9 [1] provides to a widow of a city employee death benefits if the employee's death is the natural and proximate result of a personal injury sustained as a result of, and while in the performance of his duties. In *Baruffaldi v. Contributory Retirement Appeal Board* [2] the petitioner's husband suffered from heart disease and was advised to avoid "emotional upsets" as his condition was becoming progressively more serious. However, as city engineer, in the supervision of the construction of a municipal garage, he had many, almost constant, disagreements, heated disputes and bitter arguments with the contractor, causing him to become emotionally upset. His final and most bitter argument took place on December 31, 1953; the next day he died. The petitioner's application for death benefits was denied, and the denial

[6] 334 Mass. 516, 136 N.E.2d 186 (1956).

§19.9. [1] G.L., c. 32, §9(1) provides: "If the board, upon receipt of proper proof, finds that any member [of the contributory retirement system] in service died as the natural and proximate result of personal injury sustained or a hazard undergone as a result of, and while in the performance of, his duties . . . the payments and allowances hereinafter referred to . . . shall be granted to his beneficiary . . . in the sum or sums, and upon the terms and conditions, specified in this section."

[2] 1958 Mass. Adv. Sh. 781, 150 N.E.2d 269.

was affirmed by the defendant board. The board had found that Mr. Baruffaldi's death undoubtedly resulted from the effect of the argument upon his already diseased heart, and that this argument arose out of the construction of a building which Baruffaldi was supervising as city engineer; yet they ruled that his death was not the result of a personal injury sustained within the provisions of Section 9(1). The Supreme Judicial Court felt that there was no basis for concluding that what happened to Baruffaldi did not result from the performance of his duties, and that this result could be said to be "natural and proximate," narrowing the question down to whether the incident causing his death was a "personal injury" within the intendment of the statute. Clearly, under the predecessor of Section 9(1), the petitioner would not be entitled to death benefits since they were payable only in cases where "death was the natural and proximate result of an accident or of undergoing a hazard peculiar to his employment." The Court pointed out that, while under the earlier statute retirement allowances were based exclusively upon disability resulting from "accident . . . or hazard peculiar to his employment," these words were replaced by the phrase "personal injury sustained or hazard undergone" as a result of and in the performance of duty. The substitution of the words "personal injury" for "accident" is significant, and evidenced a legislative intent to authorize allowances in cases where formerly they were not permitted, for it cannot be said that in substituting the words "personal injury" for "accident," the General Court intended no change in the law. It was held in *Madden's Case*[3] that the words "personal injury" in the workmen's compensation act were not limited to injuries incurred by accident, and that the aggravation of pre-existing heart disease by exertion or strain was compensable; therefore, using this same construction, Baruffaldi's death resulted from a "personal injury," and his widow was entitled to the statutory benefits.

B. State Government

§19.10. Certain marks on ballots prohibited. The prohibitions of Section 80 of G.L., c. 54 were somewhat broadened by inserting in place thereof a section that not only proscribes the placing of identifying marks on a ballot but also prohibits any election officer engaged in counting ballots (except those actually entering the count of ballots cast on tally sheets) from holding any marking device during the counting.[1]

§19.11. Redevelopment authorities. Section 26QQ of Chapter 121 of the General Laws, as amended by Section 1 of Chapter 150 of the Acts of 1957, had created in each city and town in the Commonwealth, including Boston, a public instrumentality to be known as the "Redevelopment Authority." This section was further changed by Chap-

3 222 Mass. 487, 111 N.E. 379 (1916).

§19.10. 1 Acts of 1958, c. 194.

ter 199 of the Acts of 1958, wherein it is provided that a city or town may annually appropriate up to certain specified amounts for the purpose of defraying the initial costs and expenses of the redevelopment authority in connection with proposed projects, with the amounts permitted to be appropriated made dependent upon the valuation of the city or town.

§19.12. **Subdivision Control Law.** Section 81L of Chapter 41 of the General Laws sets forth certain definitions to be used in the construction of certain words appearing in the Subdivision Control Law. This section was amended by Section 1 of Chapter 206 of the Acts of 1958 by inserting therein the definition of "preliminary plan," which previously had not been defined.

In addition, Section 81S of Chapter 41 of the General Laws was also amended.[1] Prior to this amendment, Section 81S provided that any person, before submitting his definitive plan for approval, may submit to the planning board a preliminary plan showing his proposed subdivision in a general way. The 1958 amendment requires submission of a preliminary plan, not only to the planning board but also to the board of health, and that written notice be given to the clerk of the city or town, by delivery or by registered mail, that such a plan has been submitted. Each board shall tentatively approve or disapprove the preliminary plan and, in the case of disapproval, its reasons therefor must be stated.

The rules and regulations of Section 81Q of Chapter 41 were also amended[2] by providing that when a preliminary plan referred to in Section 81S has been submitted to a planning board, and written notice of submission as directed has been given, the preliminary plan and the definitive plan evolved therefrom shall be governed by the rules and regulations relative to subdivision control in effect at the time of the submission of the preliminary plan, provided that the definitive plan is duly submitted within seven months from the date on which the preliminary plan was submitted.

The duties of registers of deeds as to plans of land are outlined in Section 81X of Chapter 41. These duties were further delineated by Chapter 207 of the Acts of 1958 by requiring that a plan, in addition to bearing the endorsement of approval of the planning board of the city or town, shall also have endorsed thereon, or separately recorded and referred to therein, a certificate by the clerk of the city or town that no notice of appeal was received during twenty days next after receipt and recording of notice from the planning board of the approval of the plan.

§19.13. **Taking by eminent domain.** Acts of 1958, Chapter 240, amended Section 24 of Chapter 82 of the General Laws by striking out the first sentence thereof which, prior to the change, provided that when it was necessary to acquire land for the purposes of a town way or a private way, an order for the taking of the land by eminent do-

§19.12. [1] Acts of 1958, c. 206, §2.
[2] Id. §3.

main under Chapter 79 should be adopted, or proceedings for such taking under Chapter 80A should be instituted, within thirty days after the termination of the town meeting at which the laying out, alteration or relocation of the way was accepted by the town. The amendment authorizes a third method, namely, that this land may be acquired by purchase or otherwise when necessary in laying out, altering or relocating a way.

§19.14. Public water supply. New legislation concerning the fluoridation of water[1] was enacted during the 1958 SURVEY year. It added Section 41B to Chapter 40 of the General Laws. This new section prohibits any public water supply for domestic use, in any city, town or district supplying such water, which was not being fluoridated prior to September 1, 1958, from thereafter being fluoridated unless the will of the voters of the city, town or district be first ascertained by the placing of the following question upon the official ballot to be used at the next regular municipal election, or for the election of town officers at the next annual town meeting: "Shall the public water supply for domestic use in (this city) (this town) be fluoridated?" A majority of votes in the affirmative in answer to this question shall be deemed to be the will of the voters that the public water supply for domestic use be fluoridated.

§19.15. Hours of duty of permanent members of fire departments. Section 58B of Chapter 48 of the General Laws was amended by the General Court during the 1958 SURVEY year by enactment of Chapter 279 of the Acts of 1958, under the terms of which the question of accepting the provisions of law providing for a forty-eight hour week for members of fire departments may be submitted to voters in a city or town at a municipal election. Prior to the amendment, this question could be submitted to voters only at a state election.

§19.16. Nomination of beneficiaries under Contributory Retirement Law. The only persons eligible for nomination as beneficiaries under option (c) of G.L., c. 32, §12(2) were the spouse, child, father, mother or the unmarried, widowed or divorced sister of the member of the contributory retirement system. Chapter 291 of the Acts of 1958 made brothers and married sisters of contributors also eligible for nomination as beneficiaries under this option.

§19.17. Financing of certain water system facilities. Several changes were enacted by the legislature during the 1958 SURVEY year to G.L., c. 44, §8, which enumerates the purposes for which cities and towns may borrow outside the debt limit. Clause (4) of Section 8 was amended [1] by including among these purposes the original pumping station equipment and the acquisition of land or any interest in land necessary in connection with the previously mentioned purposes of the clause, while clause (5) was amended by excluding pipes from within its purview and adding thereto the lining of water mains.

§19.14. [1] Acts of 1958, c. 254.

§19.17. [1] Acts of 1958, c. 383.

§19.18. State aid for public school construction. Chapter 645 of the Acts of 1948, in which financial assistance in the establishment of certain public schools is afforded to cities and towns, was the subject of several amendments extending the time during which applications for state aid for the construction of school buildings may be made. The period of time was further extended by Chapter 356 of the Acts of 1958, which provided that the basic act ceases to be operative on June 30, 1965.